

House Study Bill 671

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/BANKING DIVISION
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to debt management, mortgage bankers and brokers,
2 delayed deposit services, regulated loans, and industrial
3 loans, and providing for fees and penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5324DP 81
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1 1 DIVISION I
1 2 DEBT MANAGEMENT
1 3 Section 1. Section 533A.1, Code 2005, is amended to read
1 4 as follows:
1 5 533A.1 DEFINITIONS.
1 6 As used in this chapter:
1 7 1. "Allowable cost" means an actual, identifiable third-
1 8 party expense incurred by the licensee on behalf of a specific
1 9 debtor, such as postage and long distance telephone charges,
1 10 that may be itemized and charged against the debtor for
1 11 payment.
1 12 2. "Creditor" means a person for whose benefit moneys are
1 13 being collected and distributed by licensees.
1 14 ~~2.~~ 3. "Debt management" means the planning and management
1 15 of the financial affairs of a debtor and the receiving
1 16 therefrom of money or evidences thereof for the purpose of
1 17 distributing the same to the debtor's creditors in payment or
1 18 partial payment of the debtor's obligations for a fee.
1 19 ~~3.~~ 4. "Debtor" means any natural person.
1 20 5. "Donation" means money given by the debtor to a
1 21 licensee as a gift for debt management and outside of the debt
1 22 management contract.
1 23 6. "Fee" means the moneys paid by the debtor to the
1 24 licensee as payment for debt management and shall not include
1 25 money paid to the licensee or held by the licensee for
1 26 distribution to a creditor, allowable costs, a distribution to
1 27 the debtor as a refund, or a donation.
1 28 7. "Gratuitous debt-management service" means debt
1 29 management without charging a fee.
1 30 ~~4.~~ 8. "Licensee" means any individual, partnership,
1 31 unincorporated association, agency or corporation person
1 32 licensed under this chapter.
1 33 9. "Natural person" means an individual who is not an
1 34 association, joint venture, or joint stock company,
1 35 partnership, limited partnership, business corporation,
2 1 nonprofit corporation, other business entity, or any group of
2 2 individuals or business entities, however organized.
2 3 ~~5.~~ 10. "Office" means each location by street number,
2 4 building number, city, and state where any person engages in
2 5 debt management.
2 6 11. "Person" means an individual, an association, joint
2 7 venture or joint stock company, partnership, limited
2 8 partnership, business corporation, nonprofit corporation, or
2 9 any other group of individuals however organized.
2 10 ~~6.~~ 12. "Superintendent" means the superintendent of
2 11 banking.
2 12 Sec. 2. Section 533A.2, Code 2005, is amended to read as
2 13 follows:
2 14 533A.2 LICENSES REQUIRED == EXCEPTIONS.
2 15 1. ~~No individual, partnership, unincorporated association,~~
2 16 ~~agency or corporation~~ A person shall not engage in the
2 17 business of debt management in this state without a license

2 18 therefor as provided for in this chapter, except that the
2 19 unless exempt under subsection 2. A person engages in the
2 20 business of debt management in this state if the person
2 21 solicits to provide, or enters into a contract with one or
2 22 more debtors to provide debt management to a debtor who
2 23 resides in this state.

2 24 2. The following persons, including employees of such
2 25 persons, shall not be required to be licensed when engaged in
2 26 the regular course of their respective businesses and
2 27 professions:

2 28 a. Attorneys at law.

2 29 b. Banks, savings and loan associations, credit unions,
2 30 mortgage bankers and mortgage brokers license or registered
2 31 under chapter 535B, insurance companies and similar

2 32 fiduciaries, regulated loan companies licensed under chapter
2 33 536, and industrial loan companies licensed under chapter
2 34 536A, authorized and admitted to transact business in this
2 35 state and performing credit and financial adjusting in the
3 1 regular course of their principal business, or while
3 2 performing an escrow function.

3 3 c. Abstract companies, while performing an escrow
3 4 function.

3 5 d. Employees of licensees under this chapter.

3 6 e. Judicial officers or others acting under court orders.

3 7 f. Nonprofit religious, fraternal or ~~co-operative~~
3 8 ~~cooperative~~ organizations, ~~including credit unions,~~ offering
3 9 to debtors gratuitous debt-management service.

3 10 g. Those persons, ~~associations, or corporations~~ whose
3 11 principal business is the origination of first mortgage loans
3 12 on real estate for their own portfolios or for sale to
3 13 institutional investors.

3 14 ~~2-~~ 3. The application for ~~such~~ a license shall be in
3 15 ~~writing, under oath, and in~~ the form prescribed by the
3 16 superintendent. The application shall contain all of the
3 17 following:

3 18 a. ~~The name of the applicant, date of incorporation, if~~
3 19 ~~incorporated, and the~~

3 20 b. ~~If the applicant is not a natural person, the type of~~
3 21 ~~business entity of the applicant and the date the entity was~~
3 22 ~~organized.~~

3 23 c. ~~The address where the business is to be conducted, and~~
3 24 ~~similar, including~~ information as to any branch office of the
3 25 applicant ~~the~~.

3 26 d. ~~The name and resident address of the applicant's owner~~
3 27 ~~or partners, or, if a corporation, association, or agency, of~~
3 28 ~~the members, shareholders, directors, trustees, principal~~
3 29 ~~officers, managers, and agents, and such other pertinent~~
3 30 ~~information as the superintendent may require. If the~~

3 31 ~~applicant is a partnership, a copy of the certificate of~~
3 32 ~~assumed name or articles of partnership shall be filed with~~
3 33 ~~the application. If the applicant is not a corporation~~

3 34 ~~natural person, a copy of the articles of incorporation legal~~
3 35 ~~documents creating the applicant shall be filed with the~~
4 1 application.

4 2 e. ~~Other pertinent information as the superintendent may~~
4 3 ~~require, including a credit report.~~

4 4 ~~3-~~ 4. Each application shall be accompanied by a bond to
4 5 be approved by the superintendent ~~to in favor of~~ the people of
4 6 the state of Iowa in the penal sum of ~~ten~~ twenty-five thousand
4 7 dollars for each office, ~~providing, however, the~~

4 8 ~~superintendent may require such bond to be raised to a maximum~~
4 9 ~~sum of twenty-five thousand dollars,~~ and conditioned that the
4 10 obligor will not violate any law pertaining to such business

4 11 and upon the faithful accounting of all moneys collected upon
4 12 accounts entrusted to such person engaged in debt management,
4 13 and their employees and agents for the purpose of indemnifying
4 14 debtors for loss resulting from conduct prohibited by this
4 15 chapter. The aggregate liability of the surety to all debtors
4 16 doing business with the office for which the bond is filed
4 17 shall, in no event, exceed the penal sum of such bond. The
4 18 surety on the bond shall have the right to cancel such bond
4 19 upon giving thirty days' notice to the superintendent and
4 20 thereafter shall be relieved of liability for any breach of
4 21 condition occurring after the effective date of ~~said the~~
4 22 ~~cancellation. No individual, partnership, unincorporated~~

4 23 ~~association, agency or corporation~~ A person shall not engage
4 24 in the business of debt management until a good and sufficient
4 25 bond is filed in accordance with the provisions of this
4 26 chapter.

4 27 ~~4-~~ 5. Each applicant shall furnish with the application a
4 28 copy of the contract the applicant proposes to use between the

4 29 applicant and the debtor, which shall contain a schedule of
4 30 fees to be charged the debtor for the applicant's services.
4 31 ~~5- 6.~~ At the time of making ~~such the~~ application the
4 32 applicant shall pay to the superintendent the sum of two
4 33 hundred fifty dollars as a license fee for each of the
4 34 applicant's offices and an investigation fee in the sum of one
4 35 hundred dollars. A separate application shall be made for
5 1 each office maintained by the applicant.

5 2 Sec. 3. Section 533A.3, Code 2005, is amended to read as
5 3 follows:

5 4 533A.3 INVESTIGATION == HEARING.

5 5 1. Upon the filing of each application and the payment of
5 6 ~~such the~~ fees, the superintendent shall ~~fix a date and a time~~
5 7 ~~for a hearing upon such application, and shall make~~ conduct an
5 8 investigation of the facts concerning the application and the
5 9 requirements provided ~~for~~ in subsection 3 ~~of this section.~~

5 10 2. The superintendent shall grant or deny each application
5 11 for a license within sixty days from the ~~filing thereof with~~
5 12 date that the application and the required fee are filed and
5 13 paid, unless the period is extended by written agreement
5 14 between the applicant and the superintendent.

5 15 3. ~~a. If the~~ The superintendent shall ~~find the~~ enter an
5 16 order granting the application, and issue and deliver a
5 17 license to the applicant if the superintendent finds that both
5 18 of the following are satisfied:

5 19 a. The experience, financial responsibility, character,
5 20 and general fitness of the applicant is ~~such~~ sufficient as to
5 21 command the confidence of the public and to warrant belief
5 22 that the business will be operated lawfully, honestly, fairly,
5 23 and efficiently within the purposes of this chapter, ~~and that~~
5 24 ~~the.~~

5 25 b. The applicant, ~~or if the applicant is an unincorporated~~
5 26 ~~association, agency or partnership, then the individuals~~
5 27 ~~involved, or if the applicant is a corporation then the~~
5 28 ~~officers and directors thereof, have~~ has not been convicted of
5 29 or pled guilty to a felony or a an indictable misdemeanor
5 30 involving moral turpitude for financial gain, or have has not
5 31 had a record of having defaulted in payment of money collected
5 32 for others, including the discharge of such debts through
5 33 bankruptcy proceedings, ~~the superintendent shall thereupon~~
5 34 ~~enter an order granting such application and forthwith issue~~
5 35 ~~and deliver a license to the applicant. The superintendent~~
6 1 ~~may require as part of the application a credit report and~~
6 2 ~~other information.~~

6 3 If the applicant is not a natural person, this subsection
6 4 shall apply to the owners, partners, members, shareholders,
6 5 officers, directors, and managers of the applicant.

6 6 ~~b. 4.~~ If the applicant has, at the time of the
6 7 application, a license for an office located within ten
6 8 ~~statute~~ miles of the location of the office named in the
6 9 application, ~~no~~ a license shall not be issued unless the
6 10 superintendent finds that public convenience will be served by
6 11 the issuance of ~~such the~~ license.

6 12 ~~c. 5.~~ No A license shall not be transferable or
6 13 assignable.

6 14 ~~4- 6.~~ If the superintendent finds the applicant not
6 15 qualified ~~by under~~ subsection 3 ~~of this section,~~ the
6 16 superintendent shall enter an order denying ~~such the~~
6 17 application and ~~forthwith~~ notify the applicant of the denial,
6 18 returning the license fee. Within fifteen days after the
6 19 entry of such order, the superintendent shall prepare written
6 20 findings and shall ~~forthwith~~ deliver a copy ~~thereof~~ to the
6 21 applicant.

6 22 Sec. 4. Section 533A.5, Code 2005, is amended to read as
6 23 follows:

6 24 533A.5 RENEWAL.

6 25 1. Each To continue in the business of debt management,
6 26 each licensee shall apply on or before July June 1 may make
6 27 application to the superintendent for renewal of its license.
6 28 The superintendent may assess a late fee of ten dollars per
6 29 day for applications submitted and accepted for processing
6 30 after June 1.

6 31 2. The renewal application shall be on the form prescribed
6 32 by the superintendent and shall be accompanied by a fee of ~~one~~
6 33 two hundred fifty dollars, ~~together with a bond as in the case~~
6 34 ~~of an original application.~~ A separate renewal application
6 35 shall be made for each office maintained by the applicant.

7 1 Sec. 5. NEW SECTION. 533A.5A CHANGE IN CONTROL == NAME
7 2 OR ADDRESS.

7 3 1. The prior written approval of the superintendent is
7 4 required whenever a change in the control of a licensee is

7 5 proposed. For purposes of this section, "control" in the case
7 6 of a corporation means direct or indirect ownership, or the
7 7 right to control, ten percent or more of the voting shares of
7 8 the corporation, or the ability of a person to elect a
7 9 majority of the directors or otherwise effect a change in
7 10 policy. "Control" in the case of any other entity means the
7 11 principals of the organization whether active or passive. The
7 12 superintendent may require information deemed necessary to
7 13 determine whether a new application is required. When
7 14 requesting approval, the person shall submit a fee of one
7 15 hundred dollars to the superintendent.

7 16 2. A licensee shall notify the superintendent and submit a
7 17 fee of twenty-five dollars per license to the superintendent
7 18 thirty days in advance of the effective date of any of the
7 19 following:

- 7 20 a. A change in the name of the licensee.
- 7 21 b. A change in the address where the business is
7 22 conducted.

7 23 Sec. 6. Section 533A.7, subsection 1, paragraph a, Code
7 24 2005, is amended to read as follows:

- 7 25 a. Conviction of a felony or of ~~a~~ an indictable
7 26 misdemeanor ~~involving moral turpitude~~ for financial gain.

7 27 Sec. 7. Section 533A.9, Code 2005, is amended to read as
7 28 follows:

7 29 533A.9 FEE AGREED IN ADVANCE.

7 30 The fee of the licensee charged to the debtor shall be
7 31 agreed upon in advance and stated in the contract and
7 32 provision for settlement in case of cancellation or prepayment
7 33 shall also be clearly stated herein in the contract. The fee
7 34 of the licensee charged to the debtor shall not exceed fifteen
7 35 percent of any payment made by the debtor and distributed to
8 1 the creditors pursuant to the contract. In case of total
8 2 payment of the contract before the contract period has
8 3 expired, the licensee shall be entitled only to a fee of no
8 4 more than three percent of ~~such the~~ final payment.

8 5 Sec. 8. NEW SECTION. 533A.9A DONATIONS.

8 6 A donation shall not be charged to a debtor or creditor,
8 7 deducted from a payment to a creditor, deducted from the
8 8 debtor's account, or from payments made to the licensee
8 9 pursuant to the debt management contract. If a licensee
8 10 requests a donation from a debtor, the licensee must clearly
8 11 indicate that any donation is voluntary and not a condition or
8 12 requirement for providing debt management.

8 13 Sec. 9. Section 533A.10, Code 2005, is amended to read as
8 14 follows:

8 15 533A.10 EXAMINATION OF LICENSEE.

8 16 1. The superintendent may examine the condition and
8 17 affairs of ~~said~~ a licensee. In connection with any
8 18 examination, the superintendent may examine on oath any
8 19 licensee, and any director, officer, employee, customer,
8 20 creditor, or stockholder of a licensee concerning the affairs
8 21 and business of the licensee. The superintendent shall
8 22 ascertain whether the licensee transacts its business in the
8 23 manner prescribed by the law and the applicable rules and
~~8 24 regulations issued thereunder~~. The licensee shall pay the
8 25 cost of the examination as determined by the superintendent,
~~8 26 which fee shall not exceed the sum of one hundred dollars per~~
~~8 27 day of examination based on the actual cost of the operation~~
~~8 28 of the finance bureau of the banking division of the~~
~~8 29 department of commerce, including the proportionate share of~~
~~8 30 the administrative expenses in the operation of the banking~~
~~8 31 division attributable to the finance bureau, as determined by~~
~~8 32 the superintendent, incurred in the discharge of duties~~
~~8 33 imposed upon the superintendent by this chapter. Failure to~~
8 34 pay the examination fee within thirty days of receipt of
8 35 demand from the superintendent shall ~~automatically suspend the~~
~~9 1 license until the fee is paid subject the licensee to a late~~
9 2 fee of up to five percent per day of the amount of the
9 3 examination fee for each day the payment is delinquent.

9 4 2. In the investigation of alleged violations of this
9 5 chapter, the superintendent may compel the attendance of any
9 6 person or the production of any books, accounts, records and
9 7 files ~~used therein~~, and may examine under oath all persons in
9 8 attendance ~~pursuant thereto~~.

~~9 9 The superintendent is authorized to make and promulgate as~~
~~9 10 prescribed by law regulations necessary to carry out the~~
~~9 11 purposes of this chapter.~~

9 12 Sec. 10. NEW SECTION. 533A.12 RULES.

9 13 The superintendent may adopt administrative rules pursuant
9 14 to chapter 17A to administer and enforce the provisions of
9 15 this chapter.

9 16 Sec. 11. Section 533A.13, Code 2005, is amended to read as
9 17 follows:

9 18 533A.13 LICENSE MANDATORY TO BUSINESS.

9 19 It shall be unlawful for ~~an individual, partnership,~~
9 20 ~~unincorporated association, agency or corporation~~ a person to
9 21 engage in the business of debt management without first
9 22 obtaining a license as required by this chapter. Any
9 23 ~~individual, partnership, unincorporated association, agency,~~
9 24 ~~corporation or any other group of individuals, however~~
9 25 ~~organized,~~ person or any owner, partner, member, officer,
9 26 director, employee, agent, or representative thereof who shall
9 27 willfully or knowingly engage in the business of debt
9 28 management without the license required by this chapter, shall
9 29 be guilty of a serious misdemeanor.

9 30 DIVISION II

9 31 MORTGAGE BANKERS AND BROKERS

9 32 Sec. 12. Section 535B.1, subsection 2, Code Supplement
9 33 2005, is amended to read as follows:

9 34 ~~2. 5A. "First mortgage~~ "Mortgage loan" means a loan of
9 35 money secured by a ~~first~~ lien on residential real property and
10 1 includes a refinancing of a contract of sale, an assumption of
10 2 a prior mortgage loan, and a refinancing of a prior mortgage
10 3 loan.

10 4 Sec. 13. Section 535B.1, subsection 4, Code 2005, as
10 5 amended by 2005 Iowa Acts, chapter 83, section 2, is amended
10 6 to read as follows:

10 7 4. "Mortgage banker" means a person who does one or more
10 8 of the following:

10 9 a. Makes at least four ~~first~~ mortgage loans on residential
10 10 real property located in this state in a calendar year.

10 11 b. Originates at least four ~~first~~ mortgage loans on
10 12 residential real property located in this state in a calendar
10 13 year and sells four or more such loans in the secondary
10 14 market.

10 15 c. Services at least four ~~first~~ mortgage loans on
10 16 residential real property located in this state. However, a
10 17 natural person, who services less than fifteen ~~first~~ mortgage
10 18 loans on residential real estate within the state and who does
10 19 not sell or transfer ~~first~~ mortgage loans, is exempt from this
10 20 paragraph if that person is otherwise exempt from the
10 21 provisions of this chapter.

10 22 "Mortgage banker" does not include a person whose job
10 23 responsibilities on behalf of a licensee or individual
10 24 registrant are to process mortgage loans, are solely clerical
10 25 in nature, or otherwise do not involve direct contact with
10 26 loan applicants.

10 27 Sec. 14. Section 535B.1, subsection 5, Code 2005, as
10 28 amended by 2005 Iowa Acts, chapter 83, section 3, is amended
10 29 to read as follows:

10 30 5. "Mortgage broker" means a person who arranges or
10 31 negotiates, or attempts to arrange or negotiate, at least four
10 32 ~~first~~ mortgage loans or commitments for four or more such
10 33 loans on residential real property located in this state in a
10 34 calendar year. "Mortgage broker" does not include a person
10 35 whose job responsibilities on behalf of a licensee or
11 1 individual registrant are to process mortgage loans, are
11 2 solely clerical in nature, or otherwise do not involve direct
11 3 contact with loan applicants.

11 4 Sec. 15. Section 535B.4, subsection 7, Code 2005, is
11 5 amended to read as follows:

11 6 7. Applications for renewals of licenses and individual
11 7 registrations under this chapter must be filed with the
11 8 administrator before June 1 of the year of expiration and on
11 9 forms prescribed by the administrator. A renewal application
11 10 must be accompanied by a fee of two hundred dollars for a
11 11 license to transact business solely as a mortgage broker, and
11 12 four hundred dollars for a license to transact business as a
11 13 mortgage banker. The fee to renew an individual registration
11 14 shall be the fee determined pursuant to 2005 Iowa Acts,
11 15 chapter 83, section 6. The administrator may assess a late
11 16 fee of ten dollars per day for applications or registrations
11 17 accepted for processing after June 1.

11 18 Sec. 16. Section 535B.4, Code 2005, is amended by adding
11 19 the following new subsection:

11 20 NEW SUBSECTION. 8. A licensee shall not conduct business
11 21 under any other name than that given in the license. A
11 22 fictitious name may be used, but a licensee shall conduct
11 23 business only under one name at a time. However, the
11 24 administrator may issue more than one license to the same
11 25 person to conduct business under different names at the same
11 26 time upon compliance for each such additional license with all

11 27 of the provisions of this chapter governing an original
11 28 issuance of a license.
11 29 Sec. 17. Section 535B.4A, subsection 2, as enacted by 2005
11 30 Iowa Acts, chapter 83, section 6, is amended to read as
11 31 follows:
11 32 2. An individual registrant who registers pursuant to this
11 33 section for the first time shall submit to a national criminal
11 34 background history check through the federal bureau of
11 35 investigation prior to being registered. The administrator
12 1 may submit the registrant's fingerprints to the federal bureau
12 2 of investigation by the department of public safety through
12 3 the state criminal history repository for the purpose of a
12 4 national criminal history check. The results of a criminal
12 5 history check conducted pursuant to this subsection shall not
12 6 be considered a public record under chapter 22. The
12 7 administrator shall collect fees necessary to cover the costs
12 8 associated with criminal background history checks conducted
12 9 pursuant to this section.
12 10 Sec. 18. NEW SECTION. 535B.6A NOTICE AND APPROVAL
12 11 REQUIRED.
12 12 1. A licensee shall submit a notice of name change and a
12 13 twenty-five dollar fee for each license to the administrator
12 14 thirty days prior to changing the name of the licensee.
12 15 2. The prior written approval is required whenever a
12 16 change in control of a licensee or registrant is proposed.
12 17 For purposes of this section, "control" means as defined in
12 18 section 524.103. The administrator may require the licensee
12 19 to provide any information deemed necessary by the
12 20 administrator to determine whether a new application is
12 21 required. At the time of requesting the approval, the
12 22 licensee or registrant requesting the change of control shall
12 23 pay to the administrator a fee of one hundred dollars.
12 24 Sec. 19. Section 535B.7, Code 2005, is amended to read as
12 25 follows:
12 26 535B.7 SUSPENSION OR REVOCATION OF LICENSE.
12 27 1. The administrator may, pursuant to chapter 17A, suspend
12 28 or revoke any license or individual registration issued
12 29 pursuant to this chapter if the administrator finds any of the
12 30 following:
12 31 a. The licensee or individual registrant has violated a
12 32 provision of this chapter or a rule adopted under this chapter
12 33 or any other state or federal law applicable to the conduct of
12 34 its business including but not limited to chapters 535 and
12 35 535A.
13 1 b. A fact or condition exists which, if it had existed at
13 2 the time of the original application for the license or
13 3 individual registration, would have warranted the
13 4 administrator to refuse originally to issue the license or
13 5 individual registration.
13 6 c. The licensee is found upon investigation to be
13 7 insolvent, in which case the license shall be revoked
13 8 immediately.
13 9 2. The administrator may order an emergency suspension of
13 10 a licensee's license or an individual's registration pursuant
13 11 to section 17A.18A. A written order containing the facts or
13 12 conduct which warrants the emergency action shall be timely
13 13 sent to the licensee or individual registrant by restricted
13 14 certified mail. Upon issuance of the suspension order, the
13 15 licensee or individual registrant must also be notified of the
13 16 right to an evidentiary hearing. A suspension proceeding
13 17 shall be promptly instituted and determined.
13 18 Except as provided in this section, a license or individual
13 19 registration shall not be revoked or suspended except after
13 20 notice and a hearing thereon in accordance with chapter 17A.
13 21 3. A licensee may surrender a license and an individual
13 22 registrant may surrender an individual registration by
13 23 delivering to the administrator written notice of surrender,
13 24 but a surrender does not affect the licensee's or individual
13 25 registrant's civil or criminal liability for acts committed
13 26 before the surrender.
13 27 4. A revocation, suspension, or surrender of a license or
13 28 individual registration does not impair or affect the
13 29 obligation of a preexisting lawful contract between the
13 30 licensee or individual registrant and any person, including a
13 31 mortgagor.
13 32 Sec. 20. Section 535B.10, Code Supplement 2005, is amended
13 33 to read as follows:
13 34 535B.10 INVESTIGATIONS AND EXAMINATIONS.
13 35 1. Within one hundred twenty days after the end of a
14 1 licensee's fiscal year, the licensee shall file financial
14 2 statements which are certified by an independent accounting

14 3 firm.

14 4 2. For the purposes of discovering violations of this
14 5 chapter or any related rules adopted under this chapter or for
14 6 securing information lawfully required under this chapter, the
14 7 administrator may at any time and as often as the
14 8 administrator deems necessary, investigate the business and
14 9 examine the books, accounts, records, and files used by a
14 10 licensee or individual registrant. ~~However, if the financial
14 11 statement required by subsection 1 shows that the licensee
14 12 satisfies the minimum net worth requirement necessary to be an
14 13 approved mortgagee by the United States department of housing
14 14 and urban development pursuant to its guidelines, as amended,
14 15 the licensee is not subject to an investigation or examination
14 16 as described in this subsection.~~

14 17 3. ~~Notwithstanding subsection 2, all licensees are subject
14 18 to limited examination by the administrator to investigate
14 19 complaints or alleged violations about the licensee made to
14 20 the administrator. Such investigation or examination by the
14 21 administrator shall be restricted to acquiring information
14 22 from the licensee relevant to the alleged violations.~~

14 23 4. ~~3.~~ In conducting any examination under this section,
14 24 the administrator may rely on current reports made by the
14 25 licensee which have been prepared for the following federal
14 26 agencies or federally related entities:

14 27 a. United States department of housing and urban
14 28 development.

14 29 b. Federal housing administration.

14 30 c. Federal national mortgage association.

14 31 d. Government national mortgage association.

14 32 e. Federal home loan mortgage corporation.

14 33 f. Veterans administration.

14 34 5. ~~4.~~ With respect to mortgage lenders or mortgage
14 35 bankers who are specifically exempted from this chapter but
15 1 are subject to sections 535B.11, 535B.12, and 535B.13, the
15 2 powers of examination and investigation concerning compliance
15 3 with sections 535B.11, 535B.12, and 535B.13 shall be exercised
15 4 by the official or agency to whose supervision the exempted
15 5 person is subject. If the administrator receives a complaint
15 6 or other information concerning noncompliance with this
15 7 chapter by an exempted person, the administrator shall inform
15 8 the official or agency having supervisory authority over that
15 9 person.

15 10 6. ~~5.~~ a. The licensee shall pay the cost of the
15 11 examination or investigation as determined by the
15 12 administrator based on the actual cost of the operation of the
15 13 finance bureau of the banking division of the department of
15 14 commerce, including the proportionate share of administrative
15 15 expenses in the operation of the banking division attributable
15 16 to the finance bureau as determined by the administrator,
15 17 incurred in the discharge of duties imposed upon the
15 18 administrator by this chapter.

15 19 b. The total charge for an examination or investigation
15 20 shall be paid by the licensee to the administrator within
15 21 thirty days after the administrator has requested payment.
15 22 The administrator may by rule provide for a charge for late
15 23 payment of the fee. The amount of the fee shall be based on
15 24 the actual costs of the examination as determined by the
15 25 administrator. Examination reports and correspondence
15 26 regarding these reports Failure to pay the charge within
15 27 thirty days shall subject the licensee to a late fee of up to
15 28 five percent of the amount of the examination or investigation
15 29 charge for each day the payment is delinquent.

15 30 6. a. All papers, documents, examination reports, and
15 31 other writings relating to the supervision of licensees and
15 32 registrants shall be kept confidential except as provided in
15 33 this subsection, notwithstanding chapter 22.

15 34 b. The administrator may furnish information relating to
15 35 the supervision of licensees and registrants to the federal
16 1 agencies or federally related entities listed in subsection 3,
16 2 the federal deposit insurance corporation, the federal reserve
16 3 system, the office of the comptroller of the currency, the
16 4 office of thrift supervision, the national credit union
16 5 administration, the federal home loan bank, and financial
16 6 institution regulatory authorities of other states, or to any
16 7 official or supervising examiner of such regulatory
16 8 authorities.

16 9 c. The administrator may release summary complaint
16 10 information regarding a particular licensee so long as the
16 11 information does not specifically identify the complainant.

16 12 d. The administrator may prepare and circulate reports
16 13 reflecting financial information and examination results for

16 14 all licensees on an aggregate basis, including other
16 15 information considered pertinent to the purpose of each report
16 16 for general statistical information.

16 17 e. The administrator may prepare and circulate reports
16 18 provided by law.

16 19 f. The administrator may release the reports and
16 20 correspondence in the course of an enforcement proceeding or a
16 21 hearing held by the administrator.

16 22 g. The administrator may also provide this information to
16 23 the attorney general for purposes of enforcing this chapter or
16 24 the consumer fraud Act, section 714.16.

16 25 Sec. 21. Section 535B.11, subsection 6, Code 2005, is
16 26 amended to read as follows:

16 27 6. If a person in connection with a ~~first~~ mortgage loan
16 28 has possession of an abstract of title and fails to deliver
16 29 the abstract to the borrower within twenty calendar days of
16 30 the borrower's request made by certified mail return receipt
16 31 requested in connection with a proposed sale of the property,
16 32 then the borrower may authorize the preparation of a new
16 33 abstract of title to the property and the person failing to
16 34 deliver the original abstract shall pay to the borrower the
16 35 reasonable costs of preparation. If the borrower brings an
17 1 action against the person failing to deliver to recover ~~such~~
17 2 the payment and in the action recovers the payment, then the
17 3 borrower shall also be entitled to recover attorney fees and
17 4 court costs incurred in the action.

17 5 Sec. 22. Section 535B.11, subsection 7, unnumbered
17 6 paragraph 1, Code 2005, is amended to read as follows:

17 7 When the servicing of a ~~first~~ mortgage loan is transferred,
17 8 sold, purchased, or accepted by a licensee or registrant, the
17 9 licensee or registrant who is transferring or selling the
17 10 servicing shall issue to the mortgagor, within five business
17 11 days of the transfer, a notice which shall include at a
17 12 minimum:

17 13 Sec. 23. Section 535B.13, Code 2005, is amended by adding
17 14 the following new subsection:

17 15 NEW SUBSECTION. 4. If the administrator finds, after
17 16 notice and hearing as provided in this chapter, that a person
17 17 has violated this chapter or a corresponding rule or an order
17 18 of the administrator, the administrator may order the person
17 19 to pay an administrative penalty of not more than five
17 20 thousand dollars for each violation, in addition to the costs
17 21 of investigation. If a person fails to pay the penalty and
17 22 costs, a lien in the amount of the penalty and costs may be
17 23 imposed upon all assets and property of the person in this
17 24 state and may be recovered in a civil action by the
17 25 administrator. Failure of the person to pay the penalty and
17 26 costs constitutes a separate violation of this chapter.

17 27 Sec. 24. NEW SECTION. 535B.17 POWERS AND DUTIES OF THE
17 28 ADMINISTRATOR == WAIVER AUTHORITY.

17 29 In addition to any other duties imposed upon the
17 30 administrator by law, the administrator may participate in a
17 31 multistate automated licensing system for mortgage bankers,
17 32 mortgage brokers, and individual registrants. For this
17 33 purpose, the administrator may establish by rule or order new
17 34 requirements as necessary, including but not limited to
17 35 requirements that license applicants and individual
18 1 registrants submit to fingerprinting, criminal history checks,
18 2 and pay fees therefor.

18 3 DIVISION III
18 4 DELAYED DEPOSIT SERVICES

18 5 Sec. 25. Section 533D.3, subsection 2, Code 2005, is
18 6 amended to read as follows:

18 7 2. An applicant for a license shall submit an application
~~18 8 under oath,~~ to the superintendent on forms prescribed by the
18 9 superintendent. The forms shall contain such information as
18 10 the superintendent may prescribe.

18 11 Sec. 26. Section 533D.3, subsection 3, paragraph a, Code
18 12 2005, is amended to read as follows:

18 13 a. An application fee ~~in an amount prescribed by rule~~
~~18 14 adopted by the superintendent of one hundred dollars.~~

18 15 Sec. 27. Section 533D.3, subsection 6, Code 2005, is
18 16 amended to read as follows:

18 17 6. a. A license issued pursuant to this chapter shall be
18 18 conspicuously posted at the licensee's place of business. A
18 19 license shall remain in effect until the next succeeding May
18 20 1, unless earlier suspended or revoked by the superintendent.

18 21 b. A license shall be renewed annually by filing with the
18 22 superintendent on or before April 1 an application for renewal
18 23 containing such information as the superintendent may require
18 24 to indicate any material change in the information contained

18 25 in the original application or succeeding renewal applications
18 26 and a renewal fee of ~~one~~ two hundred fifty dollars.
18 27 c. The superintendent may assess a late fee of ten dollars
18 28 per day for applications submitted and accepted for processing
18 29 after April 1.

18 30 Sec. 28. Section 533D.6, subsection 1, Code 2005, is
18 31 amended to read as follows:

18 32 1. The prior written approval of the superintendent is
18 33 required for the continued operation of a delayed deposit
18 34 services business whenever a change in control of a licensee
18 35 is proposed. The person requesting such approval shall pay to
19 1 the superintendent a fee of one hundred dollars. Control in
19 2 the case of a corporation means direct or indirect ownership,
19 3 or the right to control, ten percent or more of the voting
19 4 shares of the corporation, or the ability of a person to elect
19 5 a majority of the directors or otherwise effect a change in
19 6 policy. Control in the case of any other entity means any
19 7 change in the principals of the organization, whether active
19 8 or passive. The superintendent may require information deemed
19 9 necessary to determine whether a new application is required.
19 10 Costs incurred by the superintendent in investigating a change
19 11 of control request shall be paid by the person requesting such
19 12 approval.

19 13 Sec. 29. Section 533D.7, subsection 3, Code 2005, is
19 14 amended to read as follows:

19 15 3. A fee of ~~one hundred fifty~~ twenty-five dollars shall be
19 16 paid to the superintendent for each request made pursuant to
19 17 subsection 1 or 2 for a change of location. For each new
19 18 branch office established, a fee of two hundred fifty dollars
19 19 shall be paid to the superintendent.

19 20 Sec. 30. NEW SECTION. 533D.7A NOTICE OF NAME CHANGE.

19 21 A licensee shall notify the superintendent thirty days in
19 22 advance of the effective date of a change in the name of the
19 23 licensee. With the notice of change, the licensee shall
19 24 submit a fee of twenty-five dollars per license to the
19 25 superintendent.

19 26 Sec. 31. Section 533D.9, subsections 2 and 3, Code 2005,
19 27 are amended to read as follows:

19 28 2. The licensee must indicate on the face of the check
19 29 that the check is an instrument in a delayed deposit
19 30 transaction.

19 31 ~~2- 3.~~ A licensee shall give to the maker of the check, at
19 32 the time any delayed deposit service transaction is made, or
19 33 if there are two or more makers, to one of them, notice
19 34 written in clear, understandable language disclosing all of
19 35 the following:

20 1 a. The fee to be charged for the transaction.

20 2 b. The annual percentage rate ~~on the first hundred dollars~~
20 3 ~~on the face amount of the check which the fee represents, and~~
20 4 ~~the annual percentage rate on subsequent one hundred dollar~~
20 5 ~~increments which the fee represents, if different as computed~~
20 6 ~~pursuant to the federal Truth in Lending Act.~~

20 7 c. The date on which the check will be deposited or
20 8 presented for negotiation.

20 9 d. Any penalty, not to exceed fifteen dollars, which the
20 10 licensee will charge if the check is not negotiable on the
20 11 date agreed upon. A penalty to be charged pursuant to this
20 12 section shall only be collected by the licensee once on a
20 13 check no matter how long the check remains unpaid. A penalty
20 14 to be charged pursuant to this section is a licensee's
20 15 exclusive remedy and if a licensee charges a penalty pursuant
20 16 to this section no other penalties under this chapter or any
20 17 other provision apply.

20 18 ~~3- 4.~~ In addition to the notice required by subsection ~~2~~
20 19 ~~3,~~ every licensee shall conspicuously display a schedule of
20 20 all fees, charges, and penalties for all services provided by
20 21 the licensee authorized by this section. The notice shall be
20 22 posted at the office and every branch office of the licensee.

20 23 Sec. 32. Section 533D.10, subsection 1, paragraph f, Code
20 24 2005, is amended to read as follows:

20 25 f. Receive any other charges or fees in addition to the
20 26 fees listed in section 533D.9, subsections 1 and ~~2~~ 3.

20 27 Sec. 33. Section 533D.11, Code 2005, is amended to read as
20 28 follows:

20 29 533D.11 EXAMINATION OF RECORDS BY SUPERINTENDENT.

20 30 1. The superintendent shall examine the books, accounts,
20 31 and records of each licensee annually. ~~The costs of the~~
20 32 ~~superintendent incurred in an examination shall be paid by the~~
20 33 ~~licensee at least once a year and as needed to secure~~
20 34 information required pursuant to this chapter and to determine
20 35 whether any violations of this chapter have occurred. The

21 1 licensee shall pay the cost of the examination.
21 2 2. The superintendent may examine or investigate
21 3 complaints or reports concerning alleged violations of this
21 4 chapter or any rule adopted or order issued by the
21 5 superintendent. The superintendent may order the actual cost
21 6 of the examination or investigation to be paid by the person
21 7 who is the subject of the examination or investigation,
21 8 whether or not the alleged violator is licensed.
21 9 3. The superintendent shall determine the cost of the
21 10 examination or investigation based upon the actual cost of the
21 11 operation of the finance bureau of the banking division of the
21 12 department of commerce, including the proportionate share of
21 13 administrative expenses in the operation of the banking
21 14 division attributable to the finance bureau as determined by
21 15 the superintendent, incurred in the discharge of duties
21 16 imposed upon the superintendent by this chapter.
21 17 4. Failure to pay the examination or investigation fee
21 18 within thirty days of receipt of demand from the
21 19 superintendent shall subject the licensee to a late fee of up
21 20 to five percent of the amount of the examination or
21 21 investigation fee for each day the payment is delinquent.
21 22 5. Except as otherwise provided by this chapter, all
21 23 papers, documents, examination reports, and other writing
21 24 relating to the supervision of licensees are not public
21 25 records and are not subject to disclosure under chapter 22.
21 26 The superintendent may disclose information to representatives
21 27 of other state or federal regulatory authorities. The
21 28 superintendent may release summary complaint information so
21 29 long as the information does not specifically identify the
21 30 complainant. The superintendent may prepare and circulate
21 31 reports reflecting financial information and examination
21 32 results for all licensees on an aggregate basis, including
21 33 other information considered pertinent to the purpose of each
21 34 report for general statistical information. The
21 35 superintendent may prepare and circulate reports provided by
22 1 law. The superintendent may release the reports and
22 2 correspondence in the course of an enforcement proceeding or a
22 3 hearing held by the superintendent. The superintendent may
22 4 also provide this information to the attorney general for
22 5 purposes of enforcing this chapter or the consumer fraud Act,
22 6 section 714.16.

22 7 DIVISION IV
22 8 REGULATED LOANS

22 9 Sec. 34. Section 536.2, Code 2005, is amended to read as
22 10 follows:

22 11 536.2 APPLICATION == FEES.

22 12 1. ~~Application~~ An application for such a license shall be
22 13 in writing, under oath, and in the form prescribed by the
22 14 superintendent, and shall contain ~~the~~ all of the following:

22 15 a. ~~The name and the address,~~ (both of the residence and
22 16 place of business), of the applicant, ~~and if,~~ If the
22 17 applicant is ~~not a copartnership or association~~ natural
22 18 person, the application shall include the name and address of
22 19 every member thereof, and if a corporation, of each officer
22 20 and director thereof; also the, director, officer, manager,
22 21 and trustee of the applicant.

22 22 b. The county and municipality with street and number, if
22 23 any, of the place where the business of making loans under the
22 24 provisions of this chapter is to be conducted, ~~and such~~
22 25 further

22 26 c. Other relevant information as the superintendent may
22 27 require.

22 28 2. ~~Such~~ The applicant at the time of making ~~such the~~
22 29 application shall pay to the superintendent the sum of fifty
22 30 ~~one hundred~~ dollars if the liquid assets of the applicant are
22 31 not in excess of twenty thousand dollars, and the sum of one
22 32 hundred dollars if the liquid assets of the applicant are in
22 33 excess of twenty thousand dollars, as a fee for investigating
22 34 the application and the additional sum of ~~one hundred twenty-~~
22 35 ~~five~~ dollars if the liquid assets of the applicant are not in
23 1 excess of twenty thousand dollars, and two hundred fifty
23 2 dollars if the liquid assets of the applicant are in excess of
23 3 twenty thousand dollars, as an annual license fee.

23 4 3. Every applicant shall also prove, in form satisfactory
23 5 to the superintendent, that the applicant has available for
23 6 the operation of such business at the place of business
23 7 specified in the application, liquid assets of at least five
23 8 thousand dollars, or that the applicant has at least the said
23 9 amount actually in use in the conduct of such business at such
23 10 place of business.

23 11 Sec. 35. Section 536.7, Code 2005, is amended to read as

23 12 follows:

23 13 536.7 SEPARATE LICENSE == CHANGE OF NAME OR PLACE OF
23 14 BUSINESS.

23 15 1. Not more than Only one place of business where such
23 16 loans are made shall be maintained under ~~the same~~ a license,
23 17 ~~but.~~ However, the superintendent may issue more than one
23 18 license to the same licensee upon compliance, for each such
23 19 additional license, with all the provisions of this chapter
23 20 governing an original issuance of a license.

23 21 ~~Whenever a licensee shall change such place of business to~~
23 22 ~~another location the licensee shall at once give written~~
23 23 ~~notice thereof to the superintendent who shall attach to the~~
23 24 ~~license in writing the superintendent's record of the change~~
23 25 ~~and the date thereof, which shall be authority for the~~
23 26 ~~operation of such business under such license at such new~~
23 27 ~~place of business.~~

23 28 2. A licensee shall notify the superintendent and submit a
23 29 fee of twenty-five dollars per license to the superintendent
23 30 thirty days in advance of the effective date of any of the
23 31 following:

23 32 a. A change in the name of the licensee.

23 33 b. A change in the address of the location where the
23 34 business is conducted.

23 35 Sec. 36. NEW SECTION. 536.7A CHANGE IN CONTROL ==
24 1 APPROVAL.

24 2 The prior written approval of the superintendent is
24 3 required whenever a change in control of the licensee is
24 4 proposed. For purposes of this section, "control" means
24 5 control as defined in section 524.103. The superintendent may
24 6 require information deemed necessary to determine whether a
24 7 new application is required. When requesting approval, the
24 8 person shall submit a fee of one hundred dollars to the
24 9 superintendent.

24 10 Sec. 37. Section 536.8, Code 2005, is amended to read as
24 11 follows:

24 12 536.8 ANNUAL FEE == PAYMENT ~~== NEW BOND.~~

24 13 Every licensee shall annually, on or before ~~the fifteenth~~
24 14 ~~day of each~~ December 1, submit a renewal application on forms
24 15 prescribed by the superintendent and pay to the superintendent
24 16 the sum as provided in section 536.2 as an annual license fee
24 17 for the next succeeding calendar year and shall at the same
24 18 time file with the superintendent a new bond or renewal of the
24 19 old bond in the same amount and of the same character as
24 20 required by section 536.3. The superintendent may assess a
24 21 late fee of ten dollars per day, per license for renewal
24 22 applications received after December 1.

24 23 Sec. 38. Section 536.10, Code 2005, is amended to read as
24 24 follows:

24 25 536.10 EXAMINATION OF BUSINESS == FEE.

24 26 1. For the purpose of discovering violations of this
24 27 chapter or securing information lawfully required by the
24 28 superintendent ~~hereunder~~, the superintendent may at any time,
24 29 either personally or by ~~an individual or individuals duly~~
24 30 ~~designated by the superintendent~~ designee, investigate the
24 31 loans and business and examine the books, accounts, records,
24 32 and files ~~used therein~~, of every licensee and of every person
24 33 engaged in the business described in section 536.1, whether
24 34 such person shall act or claim to act as principal or agent,
24 35 or under or without the authority of this chapter. ~~For that~~
25 1 ~~purpose the~~

25 2 a. The superintendent and the superintendent's duly
25 3 ~~designated representatives~~ designee shall have and be given
25 4 free access to the place of business, books, accounts, papers,
25 5 records, files, safes, and vaults of all such persons
25 6 examined.

25 7 b. The superintendent and ~~all individuals duly designated~~
25 8 ~~by the superintendent~~ the designee shall have authority to
25 9 require the attendance of and to examine under oath all
25 10 individuals ~~whomsoever~~ whose testimony the superintendent may
25 11 require relative to such the loans or such the business.

25 12 2. The superintendent shall make an examination of the
25 13 affairs, place of business, and records of each licensed place
25 14 of business at least once each year.

25 15 3. A licensee subject to examination, supervision, and
25 16 regulation by the superintendent, shall pay to the
25 17 superintendent an examination fee, based on the actual cost of
25 18 the operation of the regulated loan bureau of the banking
25 19 division of the department of commerce, and the proportionate
25 20 share of administrative expenses in the operation of the
25 21 banking division attributable to the regulated loan bureau as
25 22 determined by the superintendent ~~of banking~~. The fee shall

25 23 apply equally to all licenses and shall not be changed more
25 24 frequently than annually ~~and when changed~~, A fee change
25 25 shall be effective on January 1 of the year following the year
25 26 in which the change is approved.

25 27 4. Upon completion of each examination required or allowed
25 28 by this chapter, the examiner shall render a bill for such
25 29 fee, in triplicate, and shall deliver one copy of the bill for
25 30 the examination to the licensee and two copies to the
25 31 superintendent. Failure to pay the fee to the superintendent
25 32 within ten thirty days after the date of the close of each
25 33 such the examination shall subject the licensee to an
25 34 additional fee of five percent of the amount of such the fee
25 35 for each day the payment is delinquent.

26 1 5. Except as otherwise provided by this chapter, all
26 2 papers, documents, examination reports, and other writing
26 3 relating to the supervision of licensees are not public
26 4 records and are not subject to disclosure under chapter 22.
26 5 The superintendent may disclose information to representatives
26 6 of other state or federal regulatory authorities. The
26 7 superintendent may release summary complaint information so
26 8 long as the information does not specifically identify the
26 9 complainant. The superintendent may prepare and circulate
26 10 reports reflecting financial information and examination
26 11 results for all licensees on an aggregate basis, including
26 12 other information considered pertinent to the purpose of each
26 13 report for general statistical information. The
26 14 superintendent may prepare and circulate reports provided by
26 15 law. The superintendent may release the reports and
26 16 correspondence in the course of an enforcement proceeding or a
26 17 hearing held by the superintendent. The superintendent may
26 18 also provide this information to the attorney general for
26 19 purposes of enforcing this chapter or the consumer fraud Act,
26 20 section 714.16.

26 21 Sec. 39. Section 536.13, Code Supplement 2005, is amended
26 22 to read as follows:

26 23 536.13 ~~BANKING COUNCIL SUPERINTENDENT~~ == REPORT ==
26 24 CLASSIFICATION == RULES == PENALTY == CONSUMER CREDIT CODE.

26 25 1. The ~~state banking council~~ superintendent may
26 26 investigate the conditions and find the facts with reference
26 27 to the business of making regulated loans, as described in
26 28 section 536.1 and after making the investigation, report in
26 29 writing its findings to the next regular session of the
26 30 general assembly, and upon the basis of the facts:
26 31 a. Classify regulated loans by a rule according to a
26 32 system of differentiation which will reasonably distinguish
26 33 the classes of loans for the purposes of this chapter.
26 34 b. Determine and fix by a rule the maximum rate of
26 35 interest or charges upon each class of regulated loans which
27 1 will induce efficiently managed commercial capital to enter
27 2 the business in sufficient amounts to make available adequate
27 3 credit facilities to individuals. The maximum rate of
27 4 interest or charge shall be stated by the ~~council~~
27 5 superintendent as an annual percentage rate calculated
27 6 according to the actuarial method and applied to the unpaid
27 7 balances of the amount financed.

27 8 2. Except as provided in subsection 7, the ~~council~~
27 9 superintendent may redetermine and refix by rule, in
27 10 accordance with subsection 1, any maximum rate of interest or
27 11 charges previously fixed by it, but the changed maximum rates
27 12 shall not affect pre-existing loan contracts lawfully entered
27 13 into between a licensee and a borrower. All rules which the
27 14 ~~council~~ superintendent may make respecting rates of interest
27 15 or charges shall state the effective date of the rules, which
27 16 shall not be earlier than thirty days after notice to each
27 17 licensee by mailing the notice to each licensed place of
27 18 business.

27 19 3. Before fixing any classification of regulated loans or
27 20 any maximum rate of interest or charges, or changing a
27 21 classification or rate under authority of this section, the
27 22 ~~council~~ superintendent shall give reasonable notice of ~~its the~~
27 23 superintendent's intention to consider doing so to all
27 24 licensees and a reasonable opportunity to be heard and to
27 25 introduce evidence with respect to the change or
27 26 classification.

27 27 4. Beginning July 4, 1965, and until such time as a
27 28 different rate is fixed by the ~~council~~ superintendent, the
27 29 maximum rate of interest or charges upon the class or classes
27 30 of regulated loans is ~~three~~ as follows:

27 31 a. Three percent per month on any part of the unpaid
27 32 principal balance of the loan not exceeding one hundred fifty
27 33 dollars ~~and two.~~

27 34 b. Two percent per month on any part of the loan in excess
27 35 of one hundred fifty dollars, but not exceeding three hundred
28 1 dollars, ~~and one.~~

28 2 c. One and one-half percent per month on any part of the
28 3 unpaid principal balance of the loan in excess of three
28 4 hundred dollars, but not exceeding seven hundred dollars, ~~and~~
28 5 ~~one.~~

28 6 d. One percent per month on any part of the unpaid
28 7 principal balance of the loan in excess of seven hundred
28 8 dollars.

28 9 5. A licensee under this chapter may lend any sum of money
28 10 not exceeding twenty-five thousand dollars in amount and may
28 11 charge, contract for, and receive on the loan interest or
28 12 charges at a rate not exceeding the maximum rate of interest
28 13 or charges determined and fixed by the ~~council~~ superintendent
28 14 under authority of this section or pursuant to subsection 7
28 15 for those amounts in excess of ten thousand dollars.

28 16 6. If any interest or charge on a loan regulated by this
28 17 chapter in excess of those permitted by this chapter is
28 18 charged, contracted for, or received, the contract of loan is
28 19 void as to interest and charges and the licensee has no right
28 20 to collect or receive any interest or charges. In addition,
28 21 the licensee shall forfeit the right to collect the lesser of
28 22 two thousand dollars of principal of the loan or the total
28 23 amount of the principal of the loan.

28 24 7. a. The ~~council~~ superintendent may establish the
28 25 maximum rate of interest or charges as permitted under this
28 26 chapter for those loans ~~whose~~ with an unpaid principal balance
28 27 ~~is of~~ is of ten thousand dollars or less. For those loans ~~whose~~
28 28 with an unpaid principal balance ~~is of~~ is of over ten thousand
28 29 dollars, the maximum rate of interest or charges which a
28 30 licensee may charge shall be the greater of the rate permitted
28 31 by chapter 535 or the rate authorized for supervised financial
28 32 organizations by chapter 537.

28 33 b. The Iowa consumer credit code, chapter 537, applies to
28 34 a consumer loan in which the licensee participates or engages,
28 35 and a violation of the Iowa consumer credit code, chapter 537,
29 1 is a violation of this chapter.

29 2 c. Article 2, parts 3, 5, and 6 of chapter 537, and
29 3 article 3 of chapter 537, sections 537.3203, 537.3206,
29 4 537.3209, 537.3304, 537.3305, and 537.3306 apply to any credit
29 5 transaction, as defined in section 537.1301 in which a
29 6 licensee participates or engages, and any violation of those
29 7 parts or sections is a violation of this chapter. For the
29 8 purpose of applying the Iowa consumer credit code, chapter
29 9 537, to those credit transactions, "consumer loan" includes a
29 10 loan for a business purpose.

29 11 d. A provision of the Iowa consumer credit code, chapter
29 12 537, applicable to loans regulated by this chapter supersedes
29 13 a conflicting provision of this chapter.

29 14 Sec. 40. Section 536.16, subsection 1, Code 2005, is
29 15 amended to read as follows:

29 16 1. Section 536.2 to the extent it ~~requires payment of an~~
29 17 ~~annual license fee in excess of two hundred fifty dollars and~~
29 18 requires a person to prove the person has any dollar amount of
29 19 liquid assets or the use of any dollar amount in the conduct
29 20 of the person's business at the licensed place of business.

29 21 Sec. 41. Section 536.23, Code 2005, is amended to read as
29 22 follows:

29 23 536.23 JUDICIAL REVIEW.

29 24 Judicial review of the actions of the superintendent ~~or the~~
29 25 ~~state banking council~~ may be sought in accordance with the
29 26 terms of the Iowa administrative procedure Act, chapter 17A.

29 27 Sec. 42. Section 536.28, subsection 3, Code Supplement
29 28 2005, is amended by striking the subsection.

29 29 Sec. 43. Section 536.25, Code 2005, is repealed.

29 30 DIVISION V
29 31 INDUSTRIAL LOANS

29 32 Sec. 44. Section 536A.7, Code 2005, is amended to read as
29 33 follows:

29 34 536A.7 APPLICATION FOR LICENSE.

29 35 1. ~~Applications~~ The application for licenses a license to
30 1 engage in the business of operating an industrial loan
30 2 ~~companies~~ company shall be in writing on such forms in the
30 3 form as may be prescribed by the superintendent. The
30 4 application shall give all of the following information:

30 5 a. The name of the corporation, ~~the.~~

30 6 b. The location where the business is to be conducted,
30 7 including the street address of the place of business, ~~the.~~

30 8 c. The names and addresses of the officers and directors
30 9 of the corporation ~~and such other.~~

30 10 d. Other relevant information as the superintendent shall
30 11 require.

30 12 2. At the time of making ~~such the~~ application the
30 13 applicant shall pay to the superintendent the sum of ~~fifty one~~
30 14 ~~hundred~~ dollars to cover the cost of the investigation of the
30 15 applicant. The applicant shall also pay to the superintendent
30 16 the sum of two hundred fifty dollars as an annual license fee
30 17 for the period ending December 31 ~~next~~ following the
30 18 application; ~~provided that if the license is granted after~~
30 19 ~~June 30 in any year, the license fee for the remainder of that~~
30 20 ~~year shall be one hundred twenty-five dollars and any license~~
30 21 ~~fee paid by the applicant in excess of that amount shall be~~
30 22 ~~refunded by the superintendent.~~

30 23 Sec. 45. Section 536A.12, Code 2005, is amended to read as

30 24 follows:

30 25 536A.12 CONTINUING LICENSE == ANNUAL FEE == CHANGE OF
30 26 LOCATION == CHANGE OF CONTROL.

30 27 1. Each ~~such~~ license remains in full force and effect
30 28 until surrendered, revoked, or suspended, or until there is a
30 29 change of control ~~on or after January 1, 1996.~~

30 30 2. A licensee, on or before ~~the second day of January~~
30 31 ~~December 1~~, shall pay to the superintendent the sum of two
30 32 hundred fifty dollars as an annual license fee for the
30 33 succeeding calendar year. The licensee shall submit the
30 34 annual license fee with a renewal application in the form
30 35 prescribed by the superintendent. The superintendent may
31 1 assess a late fee of ten dollars per day per license for
31 2 applications received after December 1.

31 3 3. When a licensee changes its name or place of business
31 4 from one location to another in the same city, ~~it shall at~~
31 5 ~~once give written notice to the superintendent who shall~~
31 6 ~~attach to the license in writing the superintendent's record~~
31 7 ~~of the change and the date of the change, which is authority~~
31 8 ~~for the operation of the business under that license at the~~
31 9 ~~new place of business the licensee shall notify the~~
31 10 superintendent thirty days in advance of the effective date of
31 11 the change. A licensee shall pay a fee of twenty-five dollars
31 12 per license to the superintendent with the notification of
31 13 change.

31 14 ~~2.~~ 4. a. A person who proposes to purchase or otherwise
31 15 acquire, directly or indirectly, any of the outstanding shares
31 16 of an industrial loan company which would result in a change
31 17 of control of the industrial loan company, shall first apply
31 18 in writing to the superintendent for a certificate of approval
31 19 for the proposed change of control.

31 20 b. At the time of making the application, the applicant
31 21 shall pay to the superintendent one hundred dollars to cover
31 22 the cost of the investigation of the applicant.

31 23 c. The superintendent shall grant the certificate if the
31 24 superintendent is satisfied ~~that~~ of both of the following:
31 25 (1) The person who proposes to obtain control of the
31 26 industrial loan company is qualified by character, experience,
31 27 and financial responsibility to control and operate the
31 28 industrial loan company in a sound and legal manner, ~~and that~~
31 29 the.

31 30 (2) The interests of the thrift certificate holders,
31 31 creditors, and shareholders of the industrial loan company,
31 32 and of the public generally, ~~shall~~ will not be jeopardized by
31 33 the proposed change of control.

31 34 d. If a board member of the industrial loan company has
31 35 reason to believe any of the requirements of this subsection
32 1 have not been ~~complied with~~ met, the board member shall
32 2 promptly report the facts in writing ~~such facts~~ to the
32 3 superintendent.

32 4 e. If there is any doubt as to whether a change in the
32 5 ownership of the outstanding shares is sufficient to result in
32 6 control of the industrial loan company, or to effect a change
32 7 in the control of the industrial loan company, ~~such the~~ such doubt
32 8 shall be resolved in favor of reporting the facts to the
32 9 superintendent.

32 10 3. 5. a. For purposes of this section, "control" means
32 11 control as defined in section 524.103. However, a change of
32 12 control does not occur when a majority shareholder of an
32 13 industrial loan company transfers the shareholder's shares of
32 14 the industrial loan company to a revocable trust, so long as
32 15 the transferor retains the power to revoke the trust and take
32 16 possession of ~~such the~~ shares.

32 17 b. Notwithstanding the provisions of paragraph "a", a
32 18 change of control is deemed to occur two years after the death
32 19 of the majority shareholder, whether the shareholder's shares
32 20 of the industrial loan company are held in a revocable trust

32 21 or otherwise.

32 22 Sec. 46. Section 536A.15, Code 2005, is amended to read as
32 23 follows:

32 24 536A.15 EXAMINATION OF LICENSEES.

32 25 1. The superintendent or the superintendent's duly
~~32 26 authorized representative designee shall, at least once each~~
32 27 year without previous notice, examine the books, accounts, and
32 28 records of each licensee engaged in the industrial loan
32 29 business as defined by this chapter. A licensee issuing
32 30 senior debt to the general public shall be audited at the
32 31 expense of the licensee by a certified public accountant
32 32 licensed to practice in the state of Iowa. A licensee not
32 33 issuing senior debt to the general public may provide an
32 34 audited statement of the licensee's parent corporation which
32 35 includes the Iowa licensee. After receiving such an audit or
33 1 audited statement, the superintendent may make further
33 2 examination of the licensee as the superintendent deems
33 3 necessary. A record of each examination shall be kept in the
33 4 superintendent's office. ~~The examinations and reports, and~~
~~33 5 other information connected with them, shall be kept~~
~~33 6 confidential in the office of the superintendent and shall not~~
~~33 7 be subject to publication or disclosure to others except as in~~
~~33 8 this chapter provided.~~

33 9 2. Except as otherwise provided by this chapter, all
33 10 papers, documents, examination reports, and other writing
33 11 relating to the supervision of licensees are not public
33 12 records and are not subject to disclosure under chapter 22.
33 13 The superintendent may disclose information to representatives
33 14 of other state or federal regulatory authorities. The
33 15 superintendent may release summary complaint information so
33 16 long as the information does not specifically identify the
33 17 complainant. The superintendent may prepare and circulate
33 18 reports reflecting financial information and examination
33 19 results for all licensees on an aggregate basis, including
33 20 other information considered pertinent to the purpose of each
33 21 report for general statistical information. The
33 22 superintendent may prepare and circulate reports provided by
33 23 law. The superintendent may release the reports and
33 24 correspondence in the course of an enforcement proceeding or a
33 25 hearing held by the superintendent. The superintendent may
33 26 also provide this information to the attorney general for
33 27 purposes of enforcing this chapter or the consumer fraud Act,
33 28 section 714.16.

33 29 3. Any evidence of criminal acts committed by officers,
33 30 directors, or employees of an industrial loan company shall be
33 31 reported by the superintendent to the proper authorities.

33 32 4. The licensee shall be charged and shall pay the actual
33 33 costs of the examination as determined by the superintendent
33 34 based on the actual cost of the operation of the finance
33 35 bureau of the banking division of the department of commerce
34 1 including the proportionate share of administrative expenses
34 2 in the operation of the banking division attributable to the
34 3 finance bureau as determined by the superintendent incurred in
34 4 the discharge of the duties imposed upon the superintendent by
34 5 this chapter. Failure to pay the examination fee within
34 6 thirty days of receipt of demand from the superintendent shall
34 7 subject the licensee to a late fee of five percent of the
34 8 amount of the examination fee for each day the payment is
34 9 delinquent.

34 10 Sec. 47. Section 536A.25, subsections 1 and 3, Code 2005,
34 11 are amended to read as follows:

34 12 1. a. An industrial loan company licensed under this
34 13 chapter that sells debt instruments to the general public in
34 14 the form of thrift certificates, installment thrift
34 15 certificates, certificates of indebtedness, promissory notes,
34 16 or similar evidences of indebtedness shall not make a loan of
34 17 money or property to or guarantee the obligations of its
34 18 directors or officers; or loan to any borrower, other than a
34 19 subsidiary or affiliated corporation, more than twenty percent
34 20 of its total capital, surplus, and undivided profits.
34 21 b. A licensee shall not make a loan under any other name
34 22 or at any other place of business than that named in the
34 23 license.

34 24 3. Investments by an industrial loan company licensed
34 25 under this chapter that sells debt instruments to the general
34 26 public in the form of thrift certificates, installment thrift
34 27 certificates, certificates of indebtedness, promissory notes,
34 28 or similar evidences of indebtedness are subject to the
34 29 provisions of section 524.901 as applied to state banks.

34 30 Sec. 48. Section 536A.30, Code 2005, is amended to read as
34 31 follows:

34 32 536A.30 NONRESIDENT LICENSEES == FACE=TO=FACE

34 33 SOLICITATION.

34 34 Notwithstanding other provisions of this chapter to the
34 35 contrary, a person ~~which~~ that neither has an office physically
35 1 located in this state nor engages in face-to-face solicitation
35 2 in this state, if authorized by another state to make loans in
35 3 that state at a rate of finance charge in excess of the rate
35 4 provided in chapter 535, shall not be subject to the following
35 5 provisions of this chapter:

~~35 6 1. Section 536A.7, to the extent it requires payment of an
35 7 annual license fee in excess of two hundred fifty dollars.~~

~~35 8 2. Section 536A.8.~~

~~35 9 3. 2. Section 536A.10, subsections 2, 3, and 4.~~

~~35 10 4. Section 536A.12, to the extent it requires a licensee
35 11 to pay an annual license fee which, when combined with that
35 12 required in section 536A.7, is in excess of two hundred fifty
35 13 dollars.~~

~~35 14 5. 3. Section 536A.15, to the extent it requires the
35 15 superintendent to make an examination and audit of the books,
35 16 accounts and records of the licensee on a periodic basis.~~

35 17 EXPLANATION

35 18 This bill amends and updates five different Code chapters,
35 19 the provisions of which are administered by the superintendent
35 20 of banking, as follows:

35 21 Chapter 533A Debt management.

35 22 Chapter 535B Mortgage bankers and brokers.

35 23 Chapter 533D Delayed deposit services.

35 24 Chapter 536 Regulated loans.

35 25 Chapter 536A Industrial loans.

35 26 The bill makes similar amendments to the various chapter
35 27 provisions, including the following:

35 28 1. Licensure requirements. The bill deletes the writing
35 29 requirement for applications, addresses what persons are
35 30 required to apply for a license and pay an annual fee, and the
35 31 basis upon which the superintendent grants a license and
35 32 conducts investigations.

35 33 2. Renewal of license. The bill provides for an annual
35 34 renewal application, and adjusts the due dates for
35 35 applications. The bill also provides for annual fees and late
36 1 fees.

36 2 3. Change in control, name or address provisions; fee
36 3 required. Prior to a change in control, as defined, the
36 4 superintendent must approve the change and may require
36 5 information to determine whether a new application must be
36 6 filed. A \$100 fee is required for approval. Likewise, the
36 7 licensee must notify the superintendent of a proposed change
36 8 in the name or address. A \$25 fee is required for each
36 9 license affected by the change in name or address.

36 10 4. Cost of examination. The superintendent is required to
36 11 determine the cost of examination based upon the actual cost
36 12 of operation of the finance bureau of the banking division,
36 13 including the proportionate share of administrative expenses.
36 14 The licensee must pay a fee for late payment of the
36 15 examination fee.

36 16 5. Release of information. All documents relating to the
36 17 superintendent's supervision of licensees are confidential;
36 18 however, the superintendent is authorized to disclose
36 19 information to state or federal regulatory authorities and
36 20 also under circumstances that do not disclose the identity of
36 21 the licensee, i.e., aggregate reporting. The superintendent
36 22 may provide information to the attorney general as well for
36 23 purposes of enforcing the law.

36 24 In Code chapter 533A, the bill defines "allowable cost",
36 25 "donation", and "gratuitous debt-management service" and other
36 26 terms. A donation is an amount of money paid by the debtor to
36 27 the licensee as a gift outside the debt management service.
36 28 If a licensee requests a donation, the licensee must make it
36 29 clear to the debtor that the donation is not a condition or
36 30 requirement for debt management services. A donation is not a
36 31 fee. For the licensing, the bill increases the bond amount
36 32 from \$10,000 to \$25,000. And, the renewal license fee is
36 33 raised from \$100 to \$250.

36 34 Code chapter 535B currently applies to first mortgage
36 35 loans. The bill strikes the word "first" so that the chapter
37 1 provisions now apply to any loan secured by residential real
37 2 property. The bill requires the licensee to conduct business
37 3 under the name named in the license; however, the
37 4 administrator may issue more than one license upon compliance
37 5 with the chapter. The bill also adds an enforcement
37 6 provision. If a person violates the chapter, or a rule or
37 7 order as applicable, the administrator may order that the

37 8 person pay a penalty of not more than \$5,000 for each
37 9 violation, in addition to the costs of the investigation.
37 10 Finally, the bill provides that the administrator may
37 11 participate in a multistate automated licensing system for
37 12 mortgage bankers, mortgage brokers, and individual
37 13 registrants. For purposes of such a multistate automated
37 14 licensing system, the administrator may create by rule or
37 15 order new requirements for applicants, such as fingerprinting
37 16 and criminal history checks and related fees.

37 17 In Code chapter 533D, the bill requires that the licensee
37 18 indicate on the face of the check that the check is an
37 19 instrument in a delayed deposit transaction. The licensee
37 20 must disclose to the maker of the check the annual percentage
37 21 rate as computed pursuant to the federal Truth In Lending Act.

37 22 In Code chapter 536, the bill strikes and replaces "state
37 23 banking council" with "superintendent" to reflect that certain
37 24 duties have been transferred to the superintendent. The bill
37 25 repeals Code section 536.25 that requires the licensee when
37 26 making a loan to obtain a written statement of the borrower's
37 27 installment indebtedness.

37 28 In Code chapter 536A the bill applies restrictions to an
37 29 industrial loan company that sells debt instruments to the
37 30 general public.

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37 32 eg:rj/je/5.1